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**MEMO ENDORSED**

May 10, 2023

BY ECF AND ELECTRONIC MAIL

The Honorable Katherine Polk Failla  
Thurgood Marshall United States Courthouse  
40 Foley Square, Courtroom 618  
New York, New York 10007

***Walmart Inc., et al. v. Capital One, N.A., 23-cv-02942 (KPF)***

Dear Judge Failla:

We represent Defendant/Counterclaim Plaintiff Capital One, National Association ("Capital One") in the above-captioned matter. Pursuant to Your Honor's Individual Rule 9(B)(i), Capital One respectfully submits this letter regarding the sealed treatment of Capital One's letter pursuant Your Honor's instruction (ECF No. 53) to seek permission to file a motion for summary judgment on count one of Capital One's Counterclaims, which is being filed under seal and on the public docket in redacted form today.

The contract at issue contains a confidentiality provision that prohibits the parties from disclosing the terms of the contract, which are discussed in Capital One's letter. The parties are considering which provisions of the contract can be disclosed on the public docket. Capital One therefore respectfully requests the Court's permission to provisionally redact portions of the letter, and to file the unredacted letter under seal.

Respectfully submitted,

/s/ Mark P. Goodman

Mark P. Goodman

The Court is in receipt of the above letter from Defendant and a similar letter from Plaintiffs (Dkt. #65), both seeking leave to file their pre-motion letters regarding Defendants' counterclaims under seal. Both applications are GRANTED. The parties should be prepared to discuss their intended motions on the counterclaims at the May 24, 2023 conference.

The Clerk of Court is directed to maintain docket entries 67 and 70 under seal, viewable only to the parties and the Court. The Clerk of Court is further directed terminate the motions at docket entries 65, 68, 69, and 70.

Dated: May 11, 2023  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE